

# Overview of Laws Regarding Language Access and Provision of Court Interpreters

## FEDERAL LAWS

### **Title VI of the 1964 Civil Rights Act (1964)**

- The legal basis for language access is Title VI. It states that “No person in the United States shall, on the ground of race, color, or **national origin**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”
- In other words, Title VI prohibits recipients of federal financial assistance, which includes state courts, from discriminating against or excluding individuals on the basis of race, color, or national origin.

### ***Lau v. Nichols*, 414 U.S. 563 (1974)**

- The U.S. Supreme Court interpreted Title VI’s prohibition on national origin discrimination to include discrimination based on inability to speak English. The US Supreme Court therefore included language as an aspect of national origin.
- In *Lau*, the parents of Chinese public school students sued the San Francisco School District, under Title VI of the Civil Rights Act. They argued that the school was not meeting its obligation to provide equal educational opportunities to all students. They said the school district needed to offer special help for students unable to speak English so they could have meaningful access to an education.
- At issue was whether school administrators may meet their obligation to provide equal educational opportunities merely by treating all students the same, or whether they must offer special help for students unable to understand English.
- The US Supreme court decided that the lack of special educational services for the Chinese students meant that the Chinese students could not understand what they were being taught, and therefore, were essentially unable to participate in school. Because of this, the court found that the school district had discriminated against the students based on their national origin.

### **Executive Order 13166 (2000)**

- Called *Improving Access to Services for Persons with Limited English Proficiency*. The goal of the LEP Executive Order was “... to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP)...”
- The Department of Justice, or DOJ, published a general guidance document called *Enforcement of Title VI of the Civil Rights Act of 1964, National Origin Discrimination Against Persons with Limited English Proficiency*. This guideline was for recipients of federal assistance from the DOJ, including the courts. The guidance document provides information to help recipients determine the extent of their obligation to provide access to LEP individuals.
- The DOJ Guidance document and subsequent technical assistance letters from the Civil Rights Division explained that court systems that receive federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI and its implementing regulations
- The requirement to provide meaningful access for LEP persons is not limited to the specific program or activity at the court that is receiving federal funding. Rather, coverage extends to all court programs and activities.
- And, it applies to all court functions that are conducted outside the courtroom as well as proceedings inside the courtroom

### ***To find the federal laws and regulations***

- Title VI of the Civil Rights Act of 1964:  
<http://www.justice.gov/crt/about/cor/coord/titlevistat.php>
- Executive Order 13166: <http://www.justice.gov/crt/about/cor/Pubs/eolep.php>
- Federal Agency LEP Guidance -- DOJ Guidance to State Courts:  
[http://www.lep.gov/final\\_courts\\_ltr\\_081610.pdf](http://www.lep.gov/final_courts_ltr_081610.pdf)
- Interpreters in Courts of the United States, 28 USC § 1827:  
<http://www.law.cornell.edu/uscode/text/28/1827>

## CALIFORNIA LAWS AND POLICIES

### Strategic Plan for Language Access in the California Courts

- 8 Goals and 75 Recommendations addressing comprehensive language access services in the California courts.
- Available through the Language Access page at [www.courts.ca.gov/languageaccess.htm](http://www.courts.ca.gov/languageaccess.htm)
- Executive Summary available in English plus 10 additional languages.
- Implementation Task Force, in charge with implementing LAP, chaired by Justice Cuéllar. Follow progress at [www.courts.ca.gov/languageaccess.htm](http://www.courts.ca.gov/languageaccess.htm).

### **Government Code § 68560 (e)**

- “The Legislature recognizes that the number of non-English speaking persons in California is increasing, and recognizes the need to provide equal justice under the law to all California citizens and residents and to provide for their special needs in their relations with the judicial and administrative law system.”

### **Government Code § 68092.1**

- It is necessary for courts to provide interpreters to all parties who require one.
- Courts may provide an interpreter in any civil case at no cost to the parties, regardless of the income. Until there is enough funding, courts must follow priorities set in Evidence Code §756<sup>1</sup>.

### **Evidence Code § 756**

- Sets forth a priority list for the provision of court interpreters in civil matters (see separate handout). First 2 groups of priorities are: Domestic violence proceedings, family law matters where a protective order is being sought or has been granted, civil harassment cases with violence, threats or stalking, elder and dependent adult abuse with physical abuse or neglect, and unlawful detainer actions.
- Includes fee waiver eligibility in prioritization for listed proceedings (not including those listed above).

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<sup>1</sup> Court interpreters already provided, at no cost to the party, by law in criminal and juvenile proceedings.

### **Government Code § 68561**

- Establishes that, except for good cause, courts must use certified or registered court interpreters. If not certified or registered interpreter available, courts must provisionally qualify person to act as interpreter. (See [California Rule of Court 2.893](#)<sup>2</sup> and separate handout on rule of court and Government Code section.)
- Sets out what must be established on the record when the court uses an interpreter (certified, registered or provisionally qualified).

### **Government Code § 11135**

- Parallel law to the federal Title VI, but broader than Title VI, including more protected classes.
- It prohibits discrimination by the state or a state agency on the basis of: race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability.
  - The term “ethnic group identification” is defined by state regulations as including linguistic characteristics (or, language).

### **Dymally-Alatorre Bilingual Services Act (Government Code §§7290-7299.8)**

- Offers more protection for LEP individuals seeking state government services, so that they are not precluded from services because of language barriers.
- It requires most state and local agencies that serve a substantial number of LEP people to be able to effectively communicate with those LEP persons through qualified bilingual staff and translated materials.
- The law defines “substantial number of LEP people” to be 5 percent or more of the population served by that local office or agency.

### **Article I, section 14 of the California Constitution**

- A person unable to understand English, who is charged with a crime, has a right to an interpreter throughout the proceedings.
- This means that interpreters are provided (and paid for) by the court for:
  - Criminal defendants in cases such as felonies, misdemeanors, and traffic infractions, as well as in juvenile delinquency cases.

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<sup>2</sup> The California Language Access Plan, Recommendation #70, requires amendment of this rule of court to include civil proceedings. In the meantime, Recommendation #9, requires courts to follow the procures laid out in CRC 2.893 for civil matters as well.

***Jara v. Municipal Court, 21 Cal.3d 181 (1978)***

- The California Supreme Court held that LEP civil litigants do not have the right to a court interpreter paid for by the court.

***Gardiana v. Small Claims Court, 59 Cal. App. 3d 412 (1976)***

- Applies to small claims cases.
- Court held that the court has a duty to appoint an interpreter free of charge for an indigent LEP litigant.
- But read Code of Civil Procedure § 116.550, limiting provision of interpreters in small claims.

**The court provides interpreters in these types of cases:**

- Criminal cases such as felonies, misdemeanors, and traffic infractions.
- Juvenile dependency and juvenile delinquency cases.
- Mental competency proceedings.
- In civil matters, per the priority order established in Evidence Code § 756.
- In both civil and criminal cases, the court will appoint an interpreter for an LEP witness. (Evidence Code §752)
- Persons who are deaf or hard of hearing are entitled to an interpreter for ALL court proceedings, whether criminal or civil. (Evidence Code § 754(b))
- For medical examinations requested by either party in a civil action to determine damages - paid for by insurer or defendant requesting examination. (Evidence Code § 755.5)

\* In administrative law proceedings before state agencies, boards and commissions, California statutes mandate language assistance (and interpreters).

***To find the California laws and regulations***

Search at <http://leginfo.legislature.ca.gov/faces/codes.xhtml> for the relevant code (e.g. Government Code), and then input the section you are looking for.